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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

UNITED STATES OF AMERICA,)	Case No.: CR 12-00887-EJD
)	
Plaintiff,)	
)	UNITED STATES' SUPPLEMENTAL
v.)	OPPOSITION TO MOTION FOR SPECIAL
)	INSTRUCTION RE IN LOCO PARENTIS
)	
PATRICIA DE LA TORRE and)	
JESUS SALINAS,)	
)	
Defendants.)	

On April 18, 2014, the defendant, Jesus Salinas, filed a motion with this Court regarding “*In Loco Parentis*” and Lack of Consent. [Docket No. 70.] On May 23, 2014, the United States filed its response to this Motion. [Docket No. 88.] Then, on September 18, 2014, the defendant filed supplemental briefing on this topic. [Docket No. 133.] The United States now files this brief, supplementing its original response to the defendant’s filing.

The defendant’s supplemental briefing fails to correct and suffers from the same flaws, as his initial motion. Simply put, there is no Ninth Circuit authority for the law as he wishes it to be. The

1 defendant requests that this Court require the government to prove beyond a reasonable doubt that no
 2 defendant in this conspiracy functioned as a surrogate parent. In the defendant's original briefing and in
 3 his supplemental briefing, the defendant fails to cite a single Ninth Circuit case requiring such proof by
 4 the government, in either a prosecution for kidnapping under Title 18, United States Code, Sections
 5 1201(a)(1), (c), or (g)(1), or in a prosecution for hostage taking under Title 18, United States Code,
 6 Section 1203(a). The Ninth Circuit Model Jury Instructions for a violation of § 1201(a)(1) kidnapping
 7 are:
 8

- 9 (1) The defendant kidnapped/seized/confined [the kidnapped person];
- 10 (2) The defendant held [the kidnapped person] for ransom, reward, or other benefit; and
- 11 (3) The defendant intentionally transported [the kidnapped person] across state lines.

12 Ninth Cir. Model Jury Instr. 8.114 (2010).

13 The 9th Circuit Model Jury Instructions for a violation of § 1203(a) hostage taking are:

- 14 (1) The defendant intentionally seized or detained a person;
- 15 (2) The defendant threatened to kill, injure, or continue to detain that person, and
- 16 (3) The defendant did so with the purpose and intention of compelling a third person to act, or

17 refrain from acting, in some way, as an explicit or implicit condition for the release of the seized or
 18 detained person.
 19

20 Ninth Cir. Model Jury Instr. 8.120 (2010).

21 The Ninth Circuit has never recognized an *in loco parentis* defense, nor has it required the
 22 government to disprove a defendant's claim of consent or of being a surrogate parent for either offense.
 23

24 Moreover, the defendant's request for this Court to rule, pretrial, that the government is required
 25 to prove more than the required elements of the charged offenses is factually baseless. The defendant's
 26 supplemental briefing continues to rely upon conclusory arguments. For instance, the defendant claims,
 27 "...given the wealth of evidence that Sarani Hernandez consented to the placement of her children with
 28

1 Maria Valenzuela...” he is entitled to supplement the Model Jury Instructions. Defendant’s
2 Supplemental Briefing at 1. First, the defense has never provided credible evidence that Hernandez
3 consented to the indefinite detention of her children. The defendant’s claim that she did is merely his
4 version of the events – an argument he is free to make at trial, but not one that entitles him to the
5 addition of unprecedented statutory elements. Second, the defendant is asking the Court to prejudge
6 evidence regarding Hernandez and her consent or lack thereof concerning the placement of her children
7 with the defendant and his confederates. It is premature to ask this Court to make such a determination.
8 Just as obviously, the Court cannot now prejudge evidence regarding the indefinite detention of the
9 victims by Salinas and Delatorre. The government respectfully requests that the Court instruct the trial
10 jury according to the Model Jury Instructions, consistent with Ninth Circuit precedent. Nothing more,
11 nothing less.
12

13
14 As discussed in the government’s original opposition, § 1201 includes a parental exception to the
15 kidnapping offense. While some circuits have extended the parental exception to surrogate parents, the
16 Ninth Circuit has not. At this point, the Court has insufficient evidence to determine, even if a surrogate
17 parent exception existed in the Ninth Circuit, whether the defendants satisfy such an exception. The
18 defendant’s conclusory claim regarding “the wealth of evidence” is nothing more than another attempt
19 to try this case through pretrial motions.
20

21 Lastly, as discussed in greater detail in the government’s original opposition, in the Tenth
22 Circuit, one that has found a surrogate parent exception, this affirmative defense may be claimed if the
23 “parent,” prior to the kidnapping, performed the incidences of parenthood. *United States v. Floyd*, 81
24 F.3d 1517, 1522 (10th Cir. 1996). Even Salinas’s version of events does not include a claim that he had
25 a parent-child relationship before the “taking” of these minor children. Salinas did not know them.
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1 Even if the Court engaged in the type of pretrial evidentiary determinations asked of it by the defense,
2 Salinas fails to meet the Tenth Circuit's standard.

3
4 Respectfully submitted,

5 Dated: 10/9/2014

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8 _____/s/_____

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